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FILED

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ACUPUNCTURE BOARD

8 **BEFORE THE**
9 **ACUPUNCTURE BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 1A-2013-210

12 **WAN HE**
4415 Norwalk Drive, Unit 21
13 San Jose, CA 95129

A C C U S A T I O N

14 **Acupuncturist License No. AC 11443**

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

22 2. On or about October 26, 2006, the Acupuncture Board issued Acupuncturist License
23 Number AC 11443 to Wan He (Respondent). The Acupuncturist License was in full force and
24 effect at all times relevant to the charges brought herein and will expire on November 30, 2016,
25 unless renewed.

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JURISDICTION

3. This Accusation is brought before the Acupuncture Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4955 of the Code states, in relevant part:

"The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct.

"Unprofessional conduct shall include, but not be limited to, the following:

"(i) Any action or conduct that would have warranted the denial of the acupuncture license.

"(l) The failure to notify the board of the use of any false, assumed, or fictitious name than the name under which he or she is licensed as an individual to practice acupuncture."

5. Section 4955.1 of the Code states:

"The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be limited to, any of the following:

"(a) Securing a license by fraud or deceit.

"(b) Committing a fraudulent or dishonest act as an acupuncturist.

"(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

"(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

"(e) Failing to maintain adequate and accurate records relating to the provision of services to their patients."

6. Section 4955.2 of the Code states:

"The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing any one of the following: (a) Gross negligence; (b) Repeated negligent acts; (c) Incompetence."

1 7. California Code of Regulations, title 16, section 1399.453 states:

2 "An acupuncturist shall keep complete and accurate records on each patient who is given
3 acupuncture treatment, including, but not limited to, treatments given and progress made as a
4 result of the acupuncture treatments."

5 **COST RECOVERY**

6 8. Section 4959 of the Code states:

7 "(a) The board may request the administrative law judge, under his or her proposed decision
8 in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of
9 unprofessional conduct to pay to the board a sum not to exceed actual and reasonable costs of the
10 investigation and prosecution of the case.

11 "(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in
12 any event be increased by the board. When the board does not adopt a proposed decision and
13 remands the case to an administrative law judge, the administrative law judge shall not increase the
14 amount of any costs assessed in the proposed decision.

15 "(c) When the payment directed in the board's order for payment of costs is not made by the
16 licensee, the board may enforce the order for payment in the superior court in the county where
17 the administrative hearing was held. This right of enforcement shall be in addition to any other
18 rights the board may have as to any licensee directed to pay costs.

19 "(d) In any judicial action for the recovery of costs, proof of the board's decision shall be
20 conclusive proof of the validity of the order of payment and the terms for payment.

21 "(e) All costs recovered under this section shall be considered a reimbursement for costs
22 incurred and shall be deposited in the Acupuncture Fund."

23 **FIRST CAUSE FOR DISCIPLINE**

24 (Unprofessional Conduct, Failure to Notify the Board of the Use of a Fictitious Name)

25 9. Respondent is subject to disciplinary action under sections 4955 [unprofessional
26 conduct] and/or 4955(l) [failure to notify the Board of the use of a fictitious name]. The
27 circumstances are as follows:
28

10. Respondent is licensed under the name Wan He; however, she owns Dr. Helen He Acupuncture Clinic and is known as Dr. Helen He. Respondent is not licensed by the Board under the name Dr. Helen He. Respondent's medical records also use the web address: www.drhelenhe.com.

11. Respondent committed unprofessional conduct and/or failure to notify the Board of the use of a fictitious name based on the use of Dr. Helen He, rather than the name she is licensed by, Wen He.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct based on the care to Patient JB)

12. Respondent is subject to disciplinary action under sections 4955 [unprofessional conduct] and/or 4955.2, subdivision (b) [repeated negligent acts] in the care provided to Patient JB, incorporating paragraphs 9 through 11, as if fully set forth below.¹ The circumstances are as follows:

13. In early September 2013, JB called Respondent's clinic to inquire whether Respondent was an in-network provider for United Healthcare. JB was told that Respondent was in-network. JB scheduled an appointment for September 11, 2013 from 6 to 7 p.m. Before the appointment, Patient JB completed paperwork, including a patient information sheet, insurance verification form, and a financial policy statement.

14. On or about September 11, 2013, Patient JB went to Respondent's acupuncture office for treatment. JB's chief complaint and reason for seeking treatment was for stress and irritable bowel syndrome. At this first visit, Respondent told JB that she was not in-network and required her to pay for the treatment at the beginning of the visit. Patient JB paid \$165.00 for the acupuncture treatment (\$150) and herbs (\$15). The patient made a second appointment for September 14, 2013 (a Saturday) at 10:30 a.m. The patient asked that Respondent not bill her insurance since the acupuncture clinic was not in-network. During this first appointment, JB

¹ Patient initials are used to protect the patient's privacy. Respondent may learn the name of the patient during the discovery process.

1 observed a verbal altercation between the Respondent's receptionist and a patient complaining
2 about his bill.

3 15. On or about Saturday September 14, 2013, JB returned to Respondent's clinic for
4 follow-up treatment. According to Patient JB, the office was so busy that she waited for almost
5 one hour after her scheduled appointment to be taken to a treatment room. JB also states that the
6 Respondent told her to pay \$315 before the appointment because she was not an in-network
7 provider. Patient JB told Respondent she could not afford that and Respondent offered her \$50
8 treatments. There is no written agreement documenting the \$50 treatments offered by
9 Respondent. JB did not pay for any services on September 14, 2013.

10 16. In the treatment room, Respondent placed the needles and then left the patient in the
11 room. The patient states that she was left alone in the room for so long (approximately two hours)
12 that the lights automatically went off. At that point, the patient had to get off of the treatment
13 table, half-dressed, and yell for the doctor. The receptionist came into the room, apologized, and
14 removed the needles from the patient. The receptionist told the patient she would not be charged
15 for the visit. Patient JB scheduled a third appointment for September 18, 2013.

16 17. During an interview on November 18, 2014 with an investigator for the Department of
17 Consumer Affairs on behalf of the Board, Respondent admitted that her receptionist removed the
18 patient's needles without Respondent's permission. Respondent could not explain how or why her
19 receptionist would have believed it was acceptable to remove the needles herself. Respondent
20 could not provide any identifying information for the receptionist, other than a first name.
21 Respondent hired her from a Craigslist ad and she only employed the receptionist for
22 approximately one month. Respondent denied that the patient waited two hours between checks
23 with needles inserted. Respondent did not terminate the receptionist from her employment or
24 discipline after learning that she removed the needles from Patient JB. According to Respondent,
25 the receptionist asked for an advance on her paycheck, which she agreed to, and then the
26 receptionist never returned to work.

27 18. On or about September 18, 2013, Patient JB called Respondent's office and
28 rescheduled her appointment for September 25, 2013.

1 19. On or about September 25, 2013, Patient JB was a no-show for her appointment with
2 Respondent. JB never returned to Respondent's clinic.

3 20. Respondent committed unprofessional conduct, and/or repeated negligent acts, based
4 on the failure of providing adequate patient monitoring undergoing acupuncture treatment, failing
5 to remove the needles personally from the patient, and not being physically present to complete the
6 patient's acupuncture treatment.

7 **THIRD CAUSE FOR DISCIPLINE**

8 (Fraudulent Billing)

9 21. Respondent is subject to disciplinary action under sections 4955 [unprofessional
10 conduct] and/or 4955.2, subdivision (b) [repeated negligent acts] and/or 4955.1, subdivision (b)
11 [fraud/dishonesty] in the care provided to Patient JB, incorporating paragraphs 9 through 20, as if
12 fully set forth below. The circumstances are as follows:

13 22. On or about September 11, 2013, Patient JB paid \$165 for her Respondent's services,
14 which included \$150 for the examination and \$15 for herbs.

15 23. On or about September 28, 2013, Respondent billed Patient JB's insurance for
16 \$680.00 based on services provided on September 11 and 14, 2013. Respondent billed \$200 for
17 an initial examination and two \$90 charges for the acupuncture treatments for the September 11th
18 visit. Respondent billed \$120 for a normal examination and two \$90 charges for the acupuncture
19 treatments for the September 14th visit. Respondent did not inform the insurance company that the
20 second treatment was not completed by Respondent and that it was not a normal visit, despite
21 billing it as a normal visit. Respondent did not inform the insurance company that she did not
22 personally complete the acupuncture treatment of Patient JB either.

23 24. On or about October 24, 2013, Patient JB's insurance company sent a reimbursement
24 check for \$315 to JB. Patient JB never sent the check to Respondent for payment for services.

25 25. In an undated letter to Patient JB's health insurance company, Respondent cancelled
26 the insurance claim submitted for services on September 11 and 14, 2013.

27 26. On or about December 13, 2013, Patient JB wrote check number 1178 in the amount
28 of \$315 to Respondent for payment for services on September 11 and 14, 2013.

27. On or about August 12, 2014, Respondent hired a collection company to seek payment of \$315 from Patient JB.

28. Respondent committed unprofessional conduct, and/or repeated negligent acts and/or dishonesty based on billing JB's insurance company for a completed treatment on September 14, 2013, when, in fact, she did not complete the treatment since the receptionist removed the needles from the patient.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Acupuncture Board issue a decision:

1. Revoking or suspending Acupuncturist License Number AC 11443, issued to Wan He;
2. Ordering Wan He to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;
3. Taking such other and further action as deemed necessary and proper.

DATED: JUL 24 2015



TERRI THORFINNSON
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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